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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,728	02/18/2004	Peter C. Brooks	31747-705.201	3396

21971 7590 02/27/2007
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
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EXAMINER	
TELLER, ROY R	
ART UNIT	PAPER NUMBER
1654	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/782,728	BROOKS ET AL.	
	Examiner	Art Unit	
	Roy Teller	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 December 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) *1, 3-5 and 13-37* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2 and 6-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/04,3/05,3/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to the election, received 12/28/06, in which applicant elected group II, claims 2-12, with traverse.

The traversal is on the ground(s) that consideration of groups I-XII together would not impose an undue burden on the examiner. This is not found persuasive because these inventions are distinct for the reasons outlined in the restriction requirement and since they have acquired a separate status in the art as shown by their different classification and/or divergent subject matter, and/or are separately and independently searched, restriction for examination purposes as indicated is proper.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1, 3-5 and 13-37 are withdrawn as being drawn to a non-elected invention

Applicant has elected the species: SEQ ID NO: 1.

Claims 2 and 6-12 are pending.

Information Disclosure Statement

The information disclosure statements, received 7/8/04, 3/25/05 and 3/16/06 are acknowledged. A signed copy of each is enclosed hereto.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined

application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2 and 6-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3, 6, 10, 13, 15, 18, and 20 of copending Application No.11/371,626. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant invention is drawn to a denatured collagen type-IV selective peptide antagonist comprising a core amino acid sequence SEQ ID NO:1: L-K-Q-N-G-G-N-F-S-L, wherein the composition comprises a radioactive material. The '626 application is drawn to a CLK and SLK peptide which comprises the core amino acid sequence of instant SEQ ID NO: 1 wherein said antagonist is administered in conjunction with radiation therapy or a cytostatic agent.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 2 and 6-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 9, 16, 23, 30, 37, 40-44 and 50 of copending Application No.11/251,442. Although the conflicting claims are not identical, they

are not patentably distinct from each other because the instant invention is drawn to a denatured collagen type-IV selective peptide antagonist comprising a core amino acid sequence SEQ ID NO:1: L-K-Q-N-G-G-N-F-S-L, wherein the composition comprises a radioactive material. The '442 application is drawn to a method of treatment comprising administering a denatured collagen type-IV selective peptide antagonist comprising a core amino acid sequence references as SEQ ID NO:1 (L-K-Q-N-G-G-N-F-S-L) in combination with radiation therapy.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2, and 6-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Brooks et al. (USPN 7,122,635).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the

inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

The instant invention is drawn to a denatured collagen type-IV selective peptide antagonist wherein the binding affinity of the denatured collagen type-IV selective antagonist to denatured type-IV collagen is substantially greater than the binding affinity of said antagonist to native collagen type-IV.

Brooks discloses antagonists of the invention bind to a denatured collagen but bind with substantially reduced affinity to the native form of the collagen. This is taken to mean that Brooks antagonist binds to denatured collagen with a greater affinity than the binding affinity of that of native collagen. This reads on the limitation of instant claim 6. A "substantially reduced affinity" is an affinity of about 3-fold lower than that for the denatured collagen, more preferably about 5-fold lower, and even more preferably about 10-fold lower, and even more preferably greater than 10-fold lower. This reads on the limitation of instant claim 7. Likewise, "substantially less" indicates a difference of at least about a 3 fold difference when referring to relative affinities. In another embodiment, an antagonist binds to denatured collagen type-IV but binds with substantially reduced affinity to native collagen type-IV. See, i.e., for example, column 3, lines 1-17. It is acknowledged that the '635 patent does not disclose instant SEQ ID NO: 1, but given that the '635 patent discloses the same activity of antagonists that bind to the denatured collagen type-IV antagonist and given that an antagonist also can be a polypeptide or peptide with specificity for denatured collagen, but not for a native form of the collagen, it would be inherent that the activity should correlate to the structure of the denatured collagen type-IV antagonist. This would read on the limitation of instant claim 2.

Therefore the reference is deemed to anticipate the instant claims above.

Conclusion

All claims are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is 571-272-0971. The examiner can normally be reached on Monday-Friday from 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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1654
2/15/07
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2/20/07
ANISH GUPTA
PRIMARY EXAMINER